Court No. 1

Civil Writ Petition No. 3102 (S/S) of 2001.

Ajmer Singh …….. Petitioner.

Versus

Union of India & Another ……. Respondents.

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**Hon'ble P.C. Verma, J.**

This petition has been field by the petitioner challenging the order dated 26.5.2001 passed by respondent No.2, by which his services have been terminated.

The petitioner was recruited as Sapper (Sepoy) in Army after the first medical test. In the procedure contained in Annexure No.2 to the writ petition, it is provided that the Recruit shall be subjected to the second medical test and when the petitioner was sent to second medical test, a disability of knock knees was found. Accordingly, the petitioner was sent to the expert/Senior Advisor (Surgery) for his final opinion, as per Army Head quarters circular. The Senior Advisor (Surgery) did not find the disability of knock knees. He found the disability of bow legs with GENU RECURVATUM and his opinion was sent to DIR GEN MEDICAL SERVICES (ARMY) (DGMS) and the DGMS referred the Recruit to the IMB and IMB on the basis of expert opinion declared the Recruit unfit for service and, accordingly, his services were terminated.

Dr. Major Abhinder Singh appeared before this court and tried to explain the disability found by col. (Dr.) H.Ramachandran, Senior Advisor (Surgery). He placed before this Court the procedure for medical test of bow legs which provides that the measurement for knock knees and bow legs should be carried out with piece, measuring 7 cms. X 5 cms. As illustrated, meaning thereby the disability of bow legs is to be indicated in terms of the centimeter, which has not been done in the present case. Thus, the opinion expressed by the expert/senior Advisor (Surgery) is not in accordance with the procedure prescribed, which provides that any reading more than 7 cms. is a cause of rejection as of bow legs with Genu Recurvatum.

Since the opinion of the Senior Advisor (Surgery) is not in terms of the centimeter according to the procedure, therefore, the petitioner cannot be declared unfit merely on the technical term as without indicating the disability in terms of centimeter exact degree of disability cannot be assessed. Therefore, the assessment made by the senior Advisor (Surgery) is doubtful.

Learned counsel for the petitioner submits that he has preferred an appeal against the order of termination, in which he had made a prayer that the petitioner may be subjected to another test by senior Advisor (Surgery).

Considering the opinion of expert/senior Advisor (Surgery) not being in accordance with the procedure prescribed, I provide that the appellate authority shall take into account this factor, while considering the prayer of the petitioner in appeal for

being sent to second medical test by the other Senior Advisor (Surgery).

Let the appeal of petitioner, contained in annexure No.3 to the writ petition, be disposed of by the appellate authority within a period of one month from the date of production of certified copy of this order. Certified copy of this order be supplied to learned standing counsel appearing for Army as well as learned counsel for the petitioner tomorrow on payment of usual charges.

The petition is disposed of accordingly.

31.10.2001 **(P.C. Verma, J.)**
P. Singh